

Case 1:21-cv-00872-PB Document 1-1 Filed 11/05/21 Page 1 of 6

New Hampshire Commission for Human Rights

COMMISSIONERS

MATT MAYBERRY, CHAIR
SHERYL L. SHIRLEY, Ph.D.,
HARVEY KEYE
SYLVIA E. GALE
JOSE R. LUNA
DOUGLAS J. PALARDY
ALEX SAMUEL



2 INDUSTRIAL PARK DRIVE
CONCORD, NEW HAMPSHIRE 03301-8501
TEL (603) 271-2767
TDD Access: Relay NH 1-800-735-2964
FAX (603) 271-6339
E-MAIL: humanrights@nh.gov
www.nh.gov/hrc

EXECUTIVE DIRECTOR
AHNI MALACHI – 271-6838

ASSISTANT DIRECTOR
SARAH E. BURKE COHEN, ESQ. – 271-6840

INVESTIGATORS
KATRINA E. TAYLOR – 271-2055
NICOLE LEMELIN – 271-6621
ANNETTE PETERS – 271-2050
ALEXANDRIA RICHARD – 271-2054

ADMINISTRATIVE ASSISTANT
DAWN M. HAMEL – 271-2768

SECRETARY
NANCY RODGERS – 271-2767

June 6, 2018

Chief Executive Officer
Elliot Health Systems
1 Elliot Way
Manchester, New Hampshire 03103

RE: Tardiff vs. Elliot Health Systems ED(R) 0230-18 16D-2018-00234

Dear Sir or Madam:

The enclosed Charge of discrimination has been received and docketed by the New Hampshire Commission for Human Rights. The Commission is the state agency granted authority by statute (RSA 354-A) to receive and investigate claims such as the enclosed.

Please submit a written response to the Charge. Any allegation in the complaint which is not denied in the answer shall be deemed admitted. This response **MUST BE VERIFIED** by the Respondent (signed and sworn, or affirmed, before a notary public or justice of the peace), and shall include at least the following:

- (a) Has the Respondent been named in the Charge by its correct legal name? If not, provide the correct name and spelling of the legal entity that owns the Respondent in your Answer to the Charge. In addition, state the legal status of your organization, e.g. corporation, partnership, sole proprietor, limited liability corporation, non-profit corporation, etc.;
- (b) The name and address of Respondent and of Respondent's attorney if represented by counsel;

Please note Commission for Human Rights rules (Hum 204 and Hum 303) require approval of a request to appear *pro hac vice* before an attorney who is not a member in good standing of the New Hampshire Bar Association may appear on behalf of a client at the Commission. Please review the text of those rules on the Commission website, www.nh.gov/hrc, and comply with them if they apply to your situation. An attorney who represents a client *pro hac vice* shall be present and accompanied by the New Hampshire attorney who has filed appearance at all conferences, meetings and hearings.

- (c) For each allegation of the Charge contested by the Respondent, state a general or specific denial, or a statement that the Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegation;
- (d) Any affirmative defenses that the Respondent wishes to raise;
- (e) A copy of the Complainant's complete personnel file. "Personnel file" as used in RSA 275.56 means any and all personnel records created and maintained by an employer and pertaining to an employee including and not limited to employment applications, internal evaluations, disciplinary documentation, . . . and performance assessments, whether maintained in one or more locations, unless such records are exempt from disclosure under RSA 275.56, III or are otherwise privileged or confidential by law. The term does not include recommendations, peer evaluations or notes not generated or created by the employer. Lab 802.09. **Do not include** benefit, payroll or I-9 documents unless specifically requested.

If this is a disability or pregnancy related charge produce the medical file for the complainant.

The Commission for Human Rights' statute and rules govern what documents are to be provided for the purpose of investigating charges of discrimination. See, RSA 354-A:5 (VII); PART Hum 102 and 207.02.

It is your duty as Respondent to redact any and all references to Complainant's date of birth, social security number or any other personal identifiers wherever located before submitting the personnel file to the Commission.

- (f) A copy of the Respondent's anti-discrimination policy and all personnel policies in effect at the time of the Complainant's employment;
- (g) Provide a copy of an organizational chart and a statement or documents describing the structure of any relationship to any subsidiaries or parent organizations, if applicable;
- (h) For any organization claiming they have fewer than 20 employees, indicate the largest number of employees in your organization (full-time, part-time, temporary or seasonal) on any one day in the six months prior to the date stamp on the charge and provide supporting documentation;
- (i) A complete list of witnesses you believe will support your position. Include their name, position, contact information and a **brief description of the information each is expected to provide the investigator**. You may request this list remain confidential at this time and need not provide it to the Complainant;
- (j) Is Respondent currently under any consent decree or conciliation with another state fair employment practice agency or the Equal Employment Opportunity Commission? If yes, submit a copy of all agreements, and
- (k) Is the Respondent a federal contractor as defined by the Office of Federal Contract Compliance (OFCCP)? www.dol.gov/ofccp

You may submit additional documentary evidence in support of your answer at this time.

IMPORTANT

You are required to preserve any and all evidence in connection with this Charge of Discrimination including, but not limited to, documents such as payroll records, notes, letters, applications, certificates, transcripts, disciplinary notices, witness statements, investigation reports, personnel records, email, instant messaging, voice mail messaging, dvd, cd, videotape, text messaging, any electronic media whatsoever including but not limited to hard drives, removable drives, external drives, objects, posters, magazines, postcards, cartoons, or any other thing that could possibly be probative of the allegations, charges, claims and defenses in this matter.

This response is due at the Commission by July 23, 2018. Provide Complainant a copy of the response and all non-confidential materials submitted to the Commission. (If Complainant is represented by counsel, send him or her a copy of the response instead, at the address indicated below.) In your response, certify that you have done so.

For your information, NH RSA 354-A:19 prohibits retaliation for filing a complaint or for testifying or assisting in any proceeding under this chapter

The Commission offers the parties voluntary mediation. A brochure describing the mediation program is enclosed. If you are interested in further information about the mediation program, please feel free to contact Katrina Taylor at (603) 271-2055.

Until an investigator is assigned to this case, please submit your response and all documents and information to:

**Alexandria Richard
NH Human Rights Commission
2 Industrial Park Drive
Concord, NH 03301-8501
(603) 271-2054
Alexandria.Richard@nh.gov**

Sincerely,



Sarah E. Burke Cohen
Assistant Director

enc.

cc: Kristie Tardiff
51 Shore Dr
Auburn NH 03032

U.S. Equal Employment Opportunity Commission

PERSON FILING CHARGE

ELLIOT HEALTH SYSTEMS
1 Elliot Way
Manchester, NH 03103

COPY

Kristie Tardiff

THIS PERSON (check one or both)

☒ Claims To Be Aggrieved☐ Is Filing on Behalf of Other(s)

EEOC CHARGE NO.

16D-2018-00234

FEPA CHARGE NO.

ED(R) 0230-18

NOTICE OF CHARGE OF DISCRIMINATION IN JURISDICTION WHERE A FEP AGENCY WILL INITIALLY PROCESS

(See the enclosed for additional information)

THIS IS NOTICE THAT A CHARGE OF EMPLOYMENT DISCRIMINATION UNDER

☐ Title VII of the Civil Rights Act (Title VII) ☐ The Equal Pay Act (EPA) ☒ The Americans with Disabilities Act (ADA)☐ The Age Discrimination in Employment Act (ADEA) ☐ The Genetic Information Nondiscrimination Act (GINA)

HAS BEEN RECEIVED BY

☐ The EEOC and sent for initial processing to _____

(FEP Agency)

☒ The New Hampshire Commission for Human Rights

and sent to EEOC for dual filing purposes.

(FEP Agency)

While EEOC has jurisdiction (upon expiration of any deferral requirement if this is a Title VII, ADA or GINA charge) to investigate this charge, EEOC may suspend its investigation and await the issuance of the Agency's final findings and orders. These findings and orders will be given weight by EEOC in making its own determination as to whether reasonable cause exists to believe that discrimination has occurred.

You are therefore encouraged to cooperate fully with the Agency. All facts and evidence provided by you to the Agency will be considered by EEOC when it reviews the Agency's final findings and orders. In many cases EEOC will take no further action, thereby avoiding the necessity of an investigation by both the Agency and EEOC. This likelihood is increased by your active cooperation with the Agency.

As a party to the charge, you may request that EEOC review the final findings and orders of the above-named Agency. For such a request to be honored, you must notify EEOC in writing within 15 days of your receipt of the Agency's final decision and order. If the Agency terminates its proceedings without issuing a final finding and order, you will be contacted further by EEOC. Regardless of whether the Agency or EEOC processes the charge, the Recordkeeping and Non-Retaliation provisions of the statutes as explained in the enclosed information sheet apply.

For further correspondence on this matter, please use the charge number(s) shown above.

Enclosure(s): Copy of Charge

CIRCUMSTANCES OF ALLEGED DISCRIMINATION

☐ Race ☐ Color ☐ Sex ☐ Religion ☐ National Origin ☐ Age ☒ Disability ☒ Retaliation ☐ Genetic Information ☐ Other

See enclosed copy of charge of discrimination.

Date

June 6, 2018

Name / Title of Authorized Official

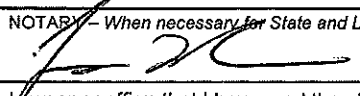

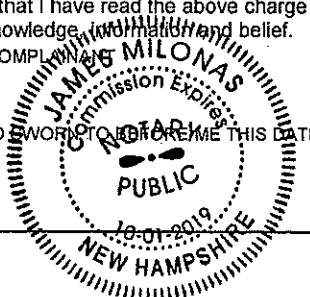
Kevin J. Berry,
District Director

Signature

COPY

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION <small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small>		Charge Presented To: Agency(ies) Charge No(s): <input checked="" type="checkbox"/> FEPA ED(R) 0230-18 <input checked="" type="checkbox"/> EEOC 16D-2018-00234	
New Hampshire Commission for Human Rights and EEOC <small>State or local Agency, if any</small>			
Name (Indicate Mr., Ms., Mrs.) Kristie Tardiff		Home Phone (Incl. Area Code) (603) 591-2683	Date of Birth
Street Address City, State and ZIP Code 51 Shore Drive, Auburn, NH 03032			
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name ELLIOT HEALTH SYSTEMS		No. Employees, Members 500 or More	Phone No. (Include Area Code) (603) 663-2938
Street Address City, State and ZIP Code 1 Elliot Way, Manchester, NH 03103			
RECEIVED JUN 11 2018 NH COMMISSION FOR HUMAN RIGHTS			
Name 		No. Employees, Members 	Phone No. (Include Area Code)
Street Address City, State and ZIP Code 			
DISCRIMINATION BASED ON (Check appropriate box(es).) <input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input checked="" type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input checked="" type="checkbox"/> OTHER (Specify) RSA 354-A		DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest 03-01-2018 04-04-2018 <input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): 1) I identify as a person with a disability. 2) I was employed as an LNA by Elliot Health Systems. 3) I performed by job adequately. 4) I was approved to take FMLA leave on December 7, 2017 as an accommodation for my disability. I exhausted FMLA leave on February 28, 2018			

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures. I declare under penalty of perjury that the above is true and correct.	NOTARY - When necessary for State and Local Agency Requirements  I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT  SUBSCRIBED AND SWORN TO before me this DATE 5/29/18 (month, day, year) 
5/29/18 Date	5/29/18 Charging Party Signature

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):

☒ FEPA

ED(R) 0230-18

☒ EEOC**16D-2018-00234****New Hampshire Commission for Human Rights**

and EEOC

State or local Agency, if any

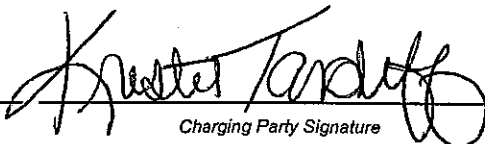
- 5) I asked Kelly Gilbert, Senior Disability and Compliance Administrator, if I was able to return to work with restrictions on April 4, 2018 if I could retain my position. Gilbert told me I was not allowed to return to work until the doctor's release without restrictions.
- 6) Thereafter, my job was posted.
- 7) My employer refused to accommodate my return to work with restrictions and refused to accommodate me by allowing my return without restrictions on a later date.
- 8) I am scheduled to be discharged from Elliot Health Systems on June 1, 2018.
- 9) My employer's failure to provide a reasonable accommodation is retaliation for my having engaged in the protected activity of requesting accommodations.
- 10) Elliot Health System continues to advertise for LNA positions.
- 11) I have and continue to suffer damages, including but not limited to, lost wages, lost earning capacity, lost employment benefits, emotional distress, humiliation, inconvenience, and loss of enjoyment of life. I seek all damages to which I am entitled.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

5/29/18

Date



Charging Party Signature

NOTARY *When necessary for State and Local Agency Requirements*

swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE

(month, day, year)

5/29/18

